Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy)

Reviewed, Revised and Prepared By

The GN / NTI NNI Review Committee

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Nunavummi Nangminiqaqtunik Ikajuuti

1.0 Coming Into Effect

1.1 The Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy) was first approved by Cabinet on March 17, 2000 and came into effect on April 1, 2000.

1.2. Pursuant to s.17.4 of the March 17, 2000 policy, the NNI underwent a comprehensive review at the end of its first three year period; details of which are set out in a report entitled *"Nunavummi Nangminiaqatunik Ikajuuti Policy First Comprehensive Review, 2003"*.

1.3. In November 2003, Cabinet approved the report and its thirty-two recommendations, with the exception of the Bid Adjustment values, and directed as follows:

(a) that a detailed workplan be developed for implementation of the recommendations; and

(b) that the administrative recommendations be implemented effective April 1, 2004.

1.4. Accordingly, the May 26, 2005 revised NNI Policy was in effect on and after April 1, 2004 for every contract initiated on or after April 1, 2004 and reflects the administrative recommendations approved by Cabinet on November 21, 2003.

1.5. On April 20th, 2006, Cabinet approved administrative changes to the NNI Policy, developed in consultation with Nunavut Tunngavik Incorporated, that increased the opportunity for Nunavut Businesses and Inuit firms to participate in Government procurement activities as well as further define the consultation process between Nunavut Tunngavik incorporated and the Government of Nunavut when contemplating further changes to the NNI Policy.

2.0 Replacement

2.1 On its coming into effect, and subject to s.21.1, this NNI Policy revises the revised Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy) of May 26, 2005, which revised the Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy) of March 17, 2000. This NNI Policy continues to replace the Contracting Procedures for the Nunavut Settlement Area and the Nunavut Business Incentives Policy which were replaced by the March 17, 2000 NNI Policy.

2.2. For greater clarity, any guidelines or directives previously issued under the replaced policies continue in effect until otherwise modified, but shall be interpreted so as to comply with this NNI Policy.

3.0 Authority

3.1 In exercising its wider responsibilities and prerogatives, the Cabinet may, on an exceptional basis, depart from the application of provisions of the Policy.

4.0 Title

4.1 The Policy is entitled the "Nunavummi Nangminiqaqtunik Ikajuuti" or "NNI Policy".

5.0 Application

5.1 Subject to sections 5.2 and 5.3, the Policy applies to the design, award, administration and interpretation of any Contract:

(a) to which the Government of Nunavut or any of its Public Agencies or Public Boards as described in the Financial Administration Act is a party;

(b) where the Government of Nunavut provides, directly more than 51% of the total Contract funds; or

(c) where the Government of Nunavut provides, directly more than 51% of the annual operating funds of one of the parties.

5.2 The Policy does not apply to:

(a) a contract that provides the Government of Nunavut with insurance against liability;

(b) a Government of Nunavut Employment Contract; or

(c) a contract for the supply of Emergency Services.

5.3 Unless otherwise agreed by the Government of the Northwest Territories, the Policy does not apply to a contract where one of the parties is:

(a) a public body that is administered on behalf of the Government of Nunavut by the Government of the Northwest Territories; or

(b) a joint body of the Government of Nunavut and the Government of the Northwest Territories.

6.0 Definitions

6.1 Unless otherwise required by the context, terms used in the Policy have the meanings set out in Appendix A..

7.0 Policy Objectives

7.1 The Policy has the following objectives:

(a) Good Value and Fair Competition

To secure goods and services for the Government of Nunavut at the best value, recognizing the higher cost of doing business in Nunavut, and using a contracting process that is clear, fair and equitable.

(b) Strengthening the Nunavut Economy

To build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment.

(c) Inuit Participation

Subject to ss.16(2), to bring about a level of Inuit participation in the provision of goods and services to the Government of Nunavut that reflects the Inuit proportion of the Nunavut population.

(d) Nunavut Education and Training

Subject to ss.16(2), to increase the number of trained and skilled Nunavut Residents in all parts of the workforce and business community to levels that reflect the Inuit proportion of the Nunavut population.

7.2 These objectives are not listed in order of importance and should not be interpreted as such.

8.0 The Bathurst Mandate

8.1 The Policy has been developed in a way consistent with the Government of Nunavut's 1999 Bathurst Mandate.

9.0 The Clyde River Protocol

9.1 The Policy has been developed in cooperation with Nunavut Tunngavik Incorporated in a way consistent with the "Protocol to Govern Working Relations Between the Government of Nunavut and Nunavut Tunngavik Incorporated" ('the Clyde River Protocol'), signed in November 1999.

10.0 Relationship to Nunavut Land Claims Agreement (NLCA)

10.1 The Policy is aimed at implementing the Government of Nunavut's obligations under Article 24 of the NLCA.

10.2 The Policy shall be interpreted so as to respect to the letter and intent of the

NLCA.

11.0 Evaluation Process and Bid Adjustment

11.1 The evaluation process for the award of Tenders shall be as follows:

(a) All Tenders submitted should meet minimum contract requirements specified in the Request For Tender and should demonstrate a capability of carrying out the work;

(b) All Tenders with a labour component over $300,000 must include a detailed training plan for Inuit workers. In the case of maintenance contracts, a training plan must be included where the contract cost is estimated to exceed $250,000.00;

(c) All Requests for Tenders shall contain a provision that requires a general contractor to invite Nunavut, Inuit or Local Companies to bid on any sub-contracts that will be entered into subsequent to the award of the main contract.

(d) All Tenders meeting the requirements of 11.1 (a), and where applicable (b), shall then be adjusted based upon Nunavut Business status, Inuit Firm status, and Local Business status of the general contractor, subcontractors, and suppliers, including the labour component;

(i) for tenders including a labour component, the adjustments for the labour component shall be based on estimates of payroll expenditures made by the general contractor, subcontractors and suppliers, for Nunavut, Inuit, and Local payroll expenditures that form part of the bid; and the bid adjustment for estimates of Inuit payroll expenditures shall be limited to the minimum requirement set out by the Contract Authority; and,

(ii) for tenders for the supply of goods, or for the clearly identified goods or materials portion of a bid such as for a construction contract, the Nunavut Business status adjustment shall apply only if the company listed in the bid is a Nunavut Supplier or Local Supplier approved by the GN for the supply of the category of goods or materials identified in the bid; and

(iii) for tenders for the supply of goods only, and not including the materials portion of a bid for a construction contract, a Bid Adjustment Cap shall apply and bid adjustments values shall only be applied to the first $100,000 of the bid value;

(iv) in the absence of any qualitative or contrary considerations based on quality of goods and services, conduct, past performance, or other like considerations, the lowest tender after adjustments shall be awarded the contract.

(e) The bid adjustment values shall be as follows:

(i) Nunavut Business status, an adjustment of 7%;

(ii) Inuit Firm status, an additional adjustment of 7%;

(iii) Local Business status, an additional adjustment of 7%.

(f) The Local Business status adjustment shall apply to any company that also qualifies for the Nunavut Business status adjustment or the Inuit Firm status adjustment, so long as that company is local to the community where the work or services are required; and

(g) (i) Where no local business submits a Bid or Proposal, any qualifying Nunavut Based, Nunavut Business or Inuit Firm, submitting a Bid or Proposal, shall be deemed to be a Local Business and the Local Business status adjustment shall apply;

(ii) a Nunavut Business or an Inuit Firm shall be considered "Nunavut Based" when it would be eligible for a Local Business status adjustment under Section 11.1(f) for the same work or service if it were to be provided in the community in which the Business or Inuit Firm is considered local.

11.2 The evaluation process for the award of Proposals shall be as follows:

(a) All proposals submitted should meet minimum contract requirements specified in the Request For Proposals (RFP) and should demonstrate a capability of carrying out the work;

(b) All Proposals containing a labour component with an estimated cost in excess of $300,000 must include a detailed training plan for Inuit workers. In the case of maintenance contracts, a training plan must be included where the contract cost is estimated to exceed $250,000.00;

(c) All proposals meeting the requirements of ss. 11.2 (a) and where applicable (b) will be evaluated to determine which appears to offer the best overall value to the Government of Nunavut, based on the evaluation criteria established in the RFP;

(d) For proposals where there is a clear cost criteria, the bid adjustment values for Tenders that are outlined in 11.1(e), (f) and where applicable (g) will be applied to that portion of the evaluation;

(e) Inuit content criteria will also be included in the evaluation criteria established for each RFP. The Inuit content values shall be, at a minimum, as follows:

(i) for Inuit employment 10%;

(ii) for Inuit ownership 5%.

11.3 Tenders and RFPs by invitation may be issued exclusively to Nunavut based businesses where sufficient competition exists, being three (3) or more companies located in Nunavut that are interested and capable of performing the work. The GN may also invite Inuit firms that are not based in Nunavut, provided they are included on the NTI Inuit Firms Registry.

11.4 Details of the evaluation process shall be further described in procedures developed by the Responsible Department and made available to the public.

11.5 Evaluation criteria, consistent with the Policy Objectives contained in 7.0, and based on the Bid Adjustment Values and Content Ratings identified in this

section, may be developed by the Responsible Department for specific types of professional services contracts or other distinctive sub-categories of contract.

12.0 Bonuses and Penalties

12.1 Construction contracts will provide for:

(a) A bonus that shall be applied in the event that minimum threshold requirements set by the Contracting Authority in the request for tenders has been exceeded;

(b) A penalty that shall be applied in event that minimum threshold requirements set by the Contracting Authority in the request for tenders which have not been met.

(c) Bonuses and Penalties that shall apply with respect to Inuit participation in employment, project management, and training.

(d) Bonuses and Penalties that shall be calculated for Local Inuit Labour and/or Nunavut Inuit Labour.

(e) Where applicable, a bonus or shall be calculated as 1% of the total labour content of the contract for each 1% of the amount by which Inuit employment exceeds the mandatory requirement.

(f) Where applicable, a penalty shall be calculated as 2% of the total labour content of the contract for each 1% of the amount by which Inuit employment does not meet the mandatory requirement.

(g) In the area of Inuit management, a bonus in the amount of 2% of the total labour content shall be determined on the basis of whether an Inuk is employed as a Project Manager, either locally or for Nunavut. A larger bonus, but not a larger penalty, of an additional 1% shall be determined for a locally employed Inuk Project Manager than a Nunavut employed Inuk Project Manager.

(h) The maximum total bonuses and penalties to be determined for a single construction contract shall not exceed 25% of the total labour price.

12.2 All other types of contracts may, at the discretion of the Contract Authority, provide for bonuses and penalties as described in section 12.1.

13.0 Leases – Special Provisions

13.1 The following two clauses must be contained in any and all Commercial Leases entered into by the Government of Nunavut:

(a) Where a lease is won as a result of an NNI Bid Adjustment, the agreed rent will remain in force only as long as the lease is owned and managed by a company that is on the Nunavut Firm Registry or the Inuit Firm Registry. Should the lease be transferred to a firm that does not qualify for either list,

the value of the lease will be adjusted to the lowest bid amount prior to the NNI bid adjustment.

(b) Any firm that wins a lease as a result of an NNI bid adjustment must report annually confirming their continued eligibility and confirming that there have been no substantive changes in ownership. Failure to do so would result in the lease being adjusted as above.

14.0 Monitoring and Enforcement Procedures

14.1 Monitoring and enforcement procedures shall be developed and applied:

(a) generally, to ensure compliance with the Policy by Contractors;

(b) more specifically, to ensure that bonuses and penalties are based on actual performance;

(c) to ensure that the Policy is applied consistently across departments of the Government of Nunavut, the various regional and local offices of those departments, and those GN Public Agencies and Boards set out in the Financial Administration Act.

15.0 Application of Monitoring and Enforcement Procedures

15.1 Each Contract Authority within the Government of Nunavut is responsible for monitoring and enforcement of Contracts under which it expend funds.

15.2 Each Contract Authority within the Government of Nunavut shall provide monitoring and enforcement information to the Responsible Department in a manner that may be stipulated by that department.

15.3 The Government of Nunavut, through the Responsible Department shall provide Nunavut Tunngavik Incorporated with information in a timely manner regarding the outcomes of its monitoring and enforcement activities.

16.0 Periodic Review

16.1 It is recognized that achieving the objectives of the Policy will require consistent and persistent effort.

16.2 It is further recognized that the achievement of objectives may be most realistically and reliably secured by measured progress over time.

16.3 The substance and application of the Policy should therefore be reviewed and revised on a periodic basis to ensure that progress towards objectives is being made in a demonstrable and balanced way.

17.0 Review Committee

17.1 An NNI Policy Review Committee, consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated, shall be established to review the implementation of the Policy on a periodic basis and, in any event, at least on an annual basis.

17.2 The NNI Policy Review Committee shall meet at least on a quarterly basis.

17.3 The Terms of Reference for the NNI Policy Review Committee are attached as Appendix B.

17.4 As part of its mandate, the Review Committee shall develop and apply specific mechanisms for assessing progress towards objectives and making recommendations for adjustments to the Policy.

17.5 As part of its mandate, the Review Committee shall examine monitoring and enforcement concerns arising out of the implementation of the Policy.

17.6 The Review Committee will conduct a comprehensive review every five years.

17.7 The Review Committee shall submit all of its work to the Government of Nunavut and Nunavut Tunngavik Incorporated.

17.8 In carrying out its work, the Review Committee shall make efforts to collect public input and to consult with interested parties. Without limiting the ability of the Committee to make other parts of its work available to the public, these annual and multi-year reviews shall in all cases be made available to the public.

18.0 Appeals Process

18.1 Subject to 18.2, an independent Contracting Appeals Board shall be established consisting of three Commissioners and three Alternate Commissioners appointed by the Minister for a term of three years as follows:

(a) one Commissioner and one Alternate Commissioner from nominees put forward by NTI;

(b) one Commissioner and one Alternate Commissioner from nominees put forward by the Nunavut regional Chambers of Commerce; and

(c) one Commissioner and one Alternate Commissioner appointed by the Minister.

18.2 In order to provide for continuity, the Minister shall appoint the first members of the Board to staggered terms as follows:

(a) one Commissioner and one Alternate Commissioner for a term of 2 years;

(b) one Commissioner and one Alternate Commissioner for a term of 3 years; and

(c) one Commissioner and one Alternate Commissioner for a term of 4 years.

18.3 The Minister shall have regard to the importance of regional representation in making appointments to the Board.

18.4 If either NTI or the Chambers of Commerce do not submit nominations to the Minister within 45 days of the Minister's request for nominations, the Minister may make the necessary appointment.

18.5 (a) A Commissioner or Alternate Commissioner must be a Nunavut Resident as defined in the NNI Policy, that is a person who:

(i) is on the NTI Inuit Enrolment List or who has spent the last twelve months ordinarily resident in Nunavut; and

(ii) has a valid Nunavut healthcare card and/or other accepted proof of residency such as a Nunavut driver's license, a lease or rental receipt, and provides a physical address where residing.

(b) A Commissioner may not be an employee of, or contractor for:

(i) The GN Department which holds responsibility for implementing the NNI Policy or the Contracting Authority of the disputed contract;

(ii) NTI or a Regional Inuit Association;

(iii) a Chamber of Commerce in Nunavut.

18.6 On appointment, a Commissioner shall certify in writing that they are not an employee as defined in paragraph 18.5 (b), and that to the best of their knowledge they are not in a conflict of interest and will not sit on any appeal if a conflict of interest comes to their attention.

18.7 No person may serve as a Commissioner until such person has accepted the position in writing and has executed a confidentiality agreement.

18.8 Each year one Commissioner shall be chosen by the Commissioners to serve as Chairperson. The role of the Chairperson is to preside over meetings of the Board and to supervise the operations of the Board.

18.9 If a Commissioner is unable to act in a particular appeal an Alternate Commissioner shall be selected by the Chairperson to hear the appeal.

18.10 The Minister shall appoint a person to act as Secretary of the Board.

18.11 (a) An unsuccessful Bidder or Proponent who wishes to challenge an award of a tender or RFP must do so in writing within five (5) business days of the award announcement. The challenge must be directed to the Contracting Authority and copied to the GN NNI Policy Advisor, and must set out the following information.

(i) the name, address, telephone and if available fax number and email address of the party challenging the award;

(ii) the tender or RFP number and/or title;

(iii) the issue(s) to be reviewed by the Contracting Authority; and

(iv) the remedy sought by the contractor.

(b) The Contracting Authority shall have five (5) business days to respond in writing and shall copy the response to the GN NNI Policy Advisor.

18.12 (a) If, after a further 5 business days have elapsed, and the unsuccessful Bidder or Proponent is not satisfied with the response of the Contracting Authority, or if no response has been received from the Contracting Authority, the unsuccessful Bidder or Proponent may appeal the award to the Board.

(b) An appeal to the Board must be in writing and directed to the Secretary of the Appeals Board within 15 business days of the award announcement.

(c) The appeal must set out the following:

(i) the name, address, telephone and if available fax number and email address of the party challenging the award;

(ii) the name of the Contracting Authority that issued the tender or RFP;

(iii) the tender or RFP number and/or title;

(iv) the issue(s) to be reviewed by the Board including the reasons why the contractor believes the application of the NNI Policy is incorrect; and

(v) the remedy sought by the contractor.

18.13 (a) An appeal from an award by an unsuccessful Bidder or Proponent to the Contracting Appeals Board may be made on the ground that the Contracting Authority in making the award has erred in the application of the NNI Policy.

(b) For greater certainty, there shall be no appeal to the Board from an act or omission relating to the performance of a contract that has been awarded.

(c) Notwithstanding (a) and (b) above, the Board has jurisdiction to consider and make recommendations on any matter relating to the application of the NNI Policy that is referred to it in writing by GN and NTI jointly.

18.14 Where the appeal filed with the Board does not fall within the jurisdiction of the Board the appeal may be dismissed by order of the Board without holding a hearing.

18.15 The Secretary of the Board shall immediately give notice of an appeal to the Board to the Contractor, to NTI and to the Contracting Authority.

18.16 In addition to the appellant, the Contracting Authority, the Contractor and NTI have the right to participate in proceedings before the Board in a particular appeal. The Board may, in its discretion, permit any other person to participate in the proceedings.

18.17 The Board shall hear the appeal as soon as possible and, in any event, shall hold a hearing no later than 10 business days after the appeal has been filed with the Board.

18.18 The Board may receive representations and evidence from the parties in writing, by conference call or in person having regard to convenience and economy. If the Board holds a hearing by conference call or by personal appearance the proceedings shall be recorded by the Board.

18.19 The Board shall conduct its proceedings in an informal manner and is not required to receive evidence on oath.

18.20 If required in a proceeding, the Board shall provide the services of an interpreter.

18.21 After hearing an appeal, the Board may:

(a) dismiss the appeal; or

(b) allow the appeal and recommend to the Contracting Authority that remedial action, consistent with sound procurement policy and practice, be taken by the Contracting Authority, which may include:

(i) requiring the contractor to undertaken additional measures,

(ii) providing the contractor with specific information as to Inuit or Inuit firms who are available and qualified,

(iii) paying compensation to an unsuccessful Bidder or Proponent,

(iv) putting the proposed contract in abeyance until the dispute is resolved, except in cases of urgency,

(v) changing any procedure or policy followed by contracting authorities,

(vi) in exceptional circumstances involving long term contracts, terminating a contract in whole or in part, and a reassessment or re-issue of tenders.

18.22 Decisions of the Board shall be by consensus and failing consensus by a majority vote. The Board shall make a decision as soon as possible after a hearing.

18.23 The Board shall give written reasons for its decisions signed by the Commissioners. If there is a majority decision, the dissenting Commissioner may give reasons for the dissent.

18.24 The Board shall distribute copies of the decision to all parties who participated in the appeal.

18.25 Notwithstanding that an appeal is pending, the Contracting Authority, in its discretion, may enter into a contract with the successful Bidder or Proponent.

18.26 If the Contracting Authority does not accept the recommendations of the Board for remedial action, in whole or in part, it shall issue reasons for its decision.

18.27 The Board shall be given access by the Contracting Authority to the Bid or Proposal of the appealing Bidder or Proponent and of the Contractor for the purposes of determining an Appeal.

18.28 The record of proceedings before the Board, including its decision, shall be

placed on a public file.

18.29 The proceedings of the Board shall be conducted in accordance with the language policy of the Government of Nunavut.

18.30 An Annual Report, including financial statements, shall be prepared by the Board at the end of each fiscal year. The Annual Report shall include a summary of appeals heard and decisions rendered.

18.31 The Annual Report shall be submitted to the Government of Nunavut and to Nunavut Tunngavik Incorporated and made available to the public.

18.32 The Government of Nunavut shall be responsible for the costs of the Board in accordance with GN Policies.

19.0 Financial Resources

19.1 The expenditure of funds by the Government of Nunavut under the Policy is conditional on approval of such funds in the Main Estimates by the Legislative Assembly and on there being a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required, and on meeting such further requirements as may be set out in the Financial Administration Act.

20.0 Revisions to or repeal of this Policy

20.1 Cabinet may make changes to this policy consistent with the obligations of the Government of Nunavut in Article 24 of the Nunavut Land Claims Agreement which requires a collaborative process with Nunavut Tunngavik Inc. in the maintenance of preferential procurement policies, procedures and approaches.

20.2 Consultation with respect to proposed new or altered Government of Nunavut policies to implement Article 24 of the Nunavut Land Claims Agreement shall mean, at a minimum:

(i) The Government of Nunavut will provide NTI with notice of a matter to be decided in sufficient form and detail to allow NTI to effectively address the matter and to prepare its views on the matter;

(ii) The Government of Nunavut will provide NTI with a reasonable period of time in which to prepare its views on the matter and to provide any such views to the Government of Nunavut;

(iii) It is recognized that assessment of a reasonable period of time with respect to any aspect of consultation with NTI should take into account

- the complexity of the matter
- the economic significance of the matter
- special cultural or community sensitivities
- the need for NTI to consult regional or other Inuit organizations
- availability of leaders or key advisors, and other logistical factors;

(iv) The Government of Nunavut will give full and fair consideration to any such views provided by NTI on the matter; and

(v) The Government of Nunavut will provide NTI with written reasons for rejecting or varying any views provided by NTI on the matter.

21.0 Contracting Policy for Territorial Parks

21.1 Pursuant to Section 5.3 of the Umbrella Inuit Impacts and Benefits Agreement (IIBA) for Territorial Parks, the NNI Policy in effect on March 17, 2000 will continue in effect until the relevant parts of the present policy have been adopted by the signatories to that Agreement.

21.2 The Park-Specific Procedures for Contracting and Business Opportunities are attached as Appendix C.

APPROVED BY CABINET

DATE: _____

_____

Paul Okalik, Premier

Includes Appendix A – Six pages
Appendix B – Three pages
Appendix C – Sixteen pages

APPENDIX A: DEFINITIONS

The following definitions apply to the Policy and its Procedures.

Article 23 - the Article of the Nunavut Land Claims Agreement dealing with Inuit Employment within Government.

Article 24 - the Article of the Nunavut Land Claims Agreement dealing with Government Contracts.

Bid - a tender or an offer to sell or provide goods, services, or construction that is submitted to a Contract Authority in response to a Request for Bids or Tenders.

Bid Adjustment - the amount by which the face value of a Bid is reduced in accordance with this Policy. The Bid Adjustment is used for Bid evaluation purposes only. The Bid price minus the Bid Adjustment will be referred to as the adjusted price.

Bid Adjustment Cap - the amount by which the Bid Adjustment is limited on a bid/tender for a Goods Contract. The cap does not apply to bids/tenders for construction contracts.

Bid Security - security given by a Bidder or Proponent to guarantee entry into a Contract.

Bidder - an individual, partnership, corporation, society or co-operative who submits a Bid.

Contract - a written agreement between a Contracting Authority and another party to provide goods, perform services, construct public works, or lease real property, for consideration, and includes

i. Contracts for the supply of goods.

ii. Construction Contracts.

iii. Contracts for the supply of services.

iv. Leases.

Contract Authority - a Government of Nunavut Minister, a Deputy Minister, or a public officer with the duties and authorities set out in the Financial Administration Act and Regulations thereto.

Contract Price - the price or price formulated in a Contract.

Contract Security - a deposit of securities by the Contractor which the Contracting Authority may convert to carry out the Contractor's obligations under the Contract.

Contractor - a corporation, partnership or individual that has been awarded a Contract for the execution of work or services under the terms of a Contract.

DIO - Nunavut Tunngavik Incorporated or such other Inuit organizations that, from time to time, Nunavut Tunngavik Incorporated may, by notice to the Government of Nunavut, designate.

Emergency Services - any contract that is sole sourced (awarded without promoting competitive bids) under the provisions of s.10(a) of the Government Contract Regulations made

pursuant to the Financial Administration Act: *"where the Contract Authority believes, on reasonable grounds, that the goods, services or construction are urgently required, and delay would be injurious to the public interest."*

Employment Contract - a Contract which establishes an employer-employee relationship.

Financial Administration Act - the Financial Management Act, R.S.N.W.T 1990 (as adopted by Nunavut) c. F-3 and amendments thereto.

General Contractor - a Contractor who contracts to undertake an entire Contract, rather than a portion of the Contract.

Goods Contract - a Contract for the purchase of articles, commodities, equipment, goods, materials or supplies which may include installation.

Government - the Government of Nunavut.

Government of Nunavut - all Territorial Government departments and all public agencies defined by the Financial Administration Act, S.N.W.T. 1987 (1), c.16, Part IX, and Schedules A, B, and C, as amended for Nunavut pursuant to s.29 and 76.05 of the federal Nunavut Act but excluding the Northwest Territories Power Corporation.

Inuit (singular: Inuk) - a person as described in the Nunavut Land Claims Agreement (NLCA).

Inuit Content - the dollar value of the goods and services required by the Contract supplied by any Inuit Firm or Inuit sole proprietorship, and Inuit Labour. Inuit Content may include:

i. goods and services supplied by an Inuit Firm or Inuit supplier acting as the General Contractor. These are referred to as "own forces";

ii. goods and services supplied by an Inuit Firm or Inuit supplier so long as these goods and services are required for the completion of the Contract and are paid for by the Contract.

iii. Inuit labour by an Inuit Firm or a non-Inuit Firm

Inuit Enrolment List - the list of Inuit maintained by Nunavut Tunngavik Incorporated under Article 35 of the Nunavut Land Claims Agreement.

Inuit Firm - an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is

i. a limited company with at least 51% of the company's voting shares beneficially owned by Inuit, or

ii. a cooperative controlled by Inuit, or

iii. an Inuk sole proprietorship or partnership; and

iv. able to present evidence of inclusion on NTI's Inuit Firms Registry.

Inuit Firms Registry - the list of Inuit Firms that is maintained by Nunavut Tunngavik Incorporated in accordance with Article 24.7.1 of the Nunavut Land Claims Agreement.

Inuit Labour - labour, including professional services, provided in any capacity by an Inuk or Inuit, and not necessarily through an Inuit Firm.

Inuit Training - Training of an Inuk or Inuit related to a specific Contract that has been pre-approved by the Contract Authority.

Inuk Project Manager - an Inuk [ordinarily resident in the Subject Community] who is capable of undertaking all aspects of the management of the project, and has decision-making authority over day-to-day matters affecting the project.

Invite - to call publicly for Bids.

Local Business - a Nunavut Business which has been resident in the Subject Community for the four months prior to application and in addition complies with the following criteria:

i. maintains an approved place of business by leasing or owning office, commercial or industrial space or where applicable, residential space, in the community on a year-round basis for the primary purpose of operating the subject business, and

ii. maintains a Local Resident Manager, and

iii. undertakes in the Subject Community the majority of its management and administrative functions related to its operations in the Subject Community, and

iv. has applied for and received designation as a Local Business at least two weeks prior to the Tender or RFP closing.

Local Content - the goods and services required by the Contract and supplied by any Local Business or Local Labour. Local Content may include:

i. goods, services or labour supplied by a local business acting as the General Contractor. These are referred to as "own forces";

ii. goods, services or labour supplied by any other Local Business or Local Supplier that are required for the completion of the Contract and are provided for by the Contract.

Local Labour - labour of Local Residents related to a Contract, not necessarily through a Local Business.

Local Resident - a Nunavut Resident who has been ordinarily resident in the subject community for the last four months.

Local Resident Manager - a Local Resident who is capable of undertaking all aspects of the management of the Local Business and has absolute decision-making authority over day to day matters affecting the Local Business. The Government of Nunavut may waive this requirement in the case of a newly appointed Local Resident Manager, on proof that within six months the Local Resident Manager will have met the residency requirements.

Local Supplier - a supplier of goods in the Subject Community, to whom the public has access and from whom the public may purchase directly from a Representative Inventory of items offered for sale. The supplier must be and must have been a Local Resident for the four months prior to application. The Government of Nunavut may recognize as a Local Supplier a

business that does not "physically" carry in inventory specific goods due to factors such as high cost/low demand, made-to-order goods, or articles of a nature that the Government is the sole requisitioner.

Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy) - the name of this Policy in Inuktitut, meaning "Assistance for Nunavut Businesses."

Nunavummi Nangminiqaqtunik Ikajuuti Business Directory - the list of Nunavut Businesses that have applied and met the requirements of the NNI for Nunavut Business Status.

Nunavut Business - A business which complies with the legal requirements to carry on business in Nunavut, and meets the following criteria:

i. is a limited company with at least 51 percent of the company's voting shares beneficially owned by Nunavut Residents, or

ii. is a co-operative with at least 51 percent of the Residents' voting shares beneficially owned by Nunavut, or

iii. is a sole proprietorship, the proprietor of which is a Nunavut Resident, or

iv. is a partnership, the majority interest in which is owned by Nunavut Residents and in which the majority benefits, under the partnership agreement, accrue to Nunavut Residents and complies with:

  i. maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business, and

  ii. maintains a Resident Manager, and

  iii. undertakes the majority of its management and administrative functions related to its Nunavut operations in Nunavut, and

  iv. has received designation as a Nunavut Business at least two weeks prior to the Tender or RFP closing.

Nunavut Content - the goods and services required by the Contract and supplied by any Nunavut Business or Nunavut Supplier. Nunavut Content may include:

i. goods, services or labour supplied by a Nunavut Business acting as the General Contractor. These are referred to as "Own Forces";

ii. goods, services or labour supplied by any other Nunavut Business or Nunavut Supplier that are required for the completion of the Contract and are paid for by the Contract.

Nunavut Resident - a person who:

i. is on the NTI Inuit Enrollment List; or has spent the last twelve months ordinarily resident in Nunavut, and

ii. has a valid Nunavut Healthcare Card and/or other accepted proof of residency such a Nunavut General Hunting Licence, a Nunavut Driver's Licence, a lease or rental receipt, and provides a physical address where residing.

Nunavut Supplier - a Nunavut Business that is a supplier of goods to which the general public has access and from whom the general public can purchase directly from a Representative Inventory of items offered for sale, and has received designation as a Nunavut Business at least two weeks prior to a Tender or RFP closing.

Nunavut Land Claims Agreement (NLCA) - the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, signed on May 25, 1993, and any amendments thereto.

Nunavut Tunngavik Incorporated (or NTI) - the corporation incorporated under the Canada Corporations Act, and the Inuit party to the Nunavut Land Claims Agreement.

Own Forces - goods, services or labour supplied by a Nunavut Business acting as the General Contractor.

Professional Services - services such as legal, accounting or consulting services provided to the Government of Nunavut by way of a Contract by individuals or professional service companies.

Proponent - an individual, partnership, corporation or cooperative who submits a Proposal.

Proposal - an offer, either unsolicited or in response to a Request for Proposals, to propose a solution to a problem, need or objective, under stated terms and conditions.

Public Agency - Public Agency means an entity as defined by the *Financial Administration Act*, *R.S.N.W.T. 1988, c. F-4*, as amended by the *Nunavut Act, S.C. 1993, c. 28* and any territorial legislation enacted pursuant to the *Nunavut Act.*

Public Board - Those boards defined as Public Boards in the Financial Administration Act Regulations concerning Government contracts.

Public Tender - a Request for Bids made by public advertisement.

Qualification Committees - committees in the Kivalliq, Kitikmeot, and Baffin Regions chaired by the Responsible Department, and responsible for determining the eligibility of businesses to be included on the **Nunavummi Nangminiqaqtunik Ikajuuti Directory.**

Request for Bids - a document defining the minimum standards to be met by Bidders and the specific requirements for goods, services or construction, so as to permit the comparison of Bids on the basis of price.

Request for Tenders - a document defining the minimum standards to be met by Tenderers and the requirements of the Contract so as to permit the comparison of Bids on the basis of price.

Request for Proposals - a document inviting companies to propose a solution to a problem, need or objective, so as to permit the comparison of proposals on the basis of a number of factors including price.

Representative Inventory - for a company that is a supplier of goods, an inventory stored in the community where the company is located, that consists of the type of goods that the

supplier deals in. The inventory volume should be large enough to generally to meet the demand of Local and Nunavut Residents and is to be re-stocked as goods are sold so that goods are usually available off the shelf.

Resident Manager - a Nunavut Resident who is capable of undertaking all aspects of the management of the Nunavut Business and has absolute decision making authority over day-to-day matters affecting the Nunavut Business. The Government of Nunavut may waive this requirement in the case of a newly appointed Resident Manager, on proof that within six months the Resident Manager will have met the residency requirements.

Responsible Department - The Department of the Government of Nunavut which holds responsibility for implementing the Nunavummi Nangminiqaqtunik Ikajuuti Policy.

Security - cash, a bank draft or certified cheque payable to the Government, or such other Security specified in the Request for Tender or Contract documents.

Solicit - to request Bids from a limited number of businesses based on some form of pre-qualification.

Standing Offer Agreement - a method of supply used to provide direct access to sources of supply for goods and/or services, on an as-needed basis, for specific periods of time, at prearranged prices and delivery conditions.

Subcontractor - includes any party that does not have a direct Contract with the owner, **or** has entered into a Contract with the General Contractor to supply goods or services that will be incorporated into the entire project covered by the Contract.

Subject Community - the community or communities wherein or adjacent to where the Contract performance is required. Where the work is required outside the legal boundaries of a community, the Government of Nunavut may:

i. define "community" to include that adjacent community in any case, or

ii. define "community" to include both or all adjacent communities, where two or more communities, such as Hall Beach/Igloolik and Arctic Bay/Nanisivik, are both very close to the work site.

iii. The name(s) of the Subject Community or Communities to be included in the term "Subject Community" for the purpose of receiving a local preference shall be specified in all Tender documents and Contracts.

Tender - a Bid or offer to sell or provide goods, services, or construction that is submitted to a Contract Authority in response to a Request for Bids or Tenders.

Tenderer - a person, partnership or corporation who submits a Tender.

Tender Adjustment - the amount by which the face value of a Tender is reduced in accordance with this Policy. The Tender Adjustment is used for Bid evaluation purposes only. The Tender price minus the Tender Adjustment will be referred to as the adjusted price.

Training - training related to a specific Contract that has been pre-approved by the Contract Authority.

APPENDIX B: NNI REVIEW COMMITTEE TERMS OF REFERENCE

Background

The Government of Nunavut's contracting preference policy, the Nunavummi Nangminiqaqtunik Ikajuuti (NNI Policy), came into effect April 1, 2000 and was revised March 31, 2004. The NNI policy was negotiated between GN and NTI to replace the GNWT Business Incentives Policy and the GNWT Contracting Procedures for the Nunavut Settlement Area with a policy designed to meet the objectives of Article 24 of the Nunavut Land Claims Agreement.

The use of incentives and preferences for Inuit and Nunavut businesses is intended to promote the growth of the economic base of the territory and ensure Inuit participation in it. This includes providing economic and training opportunities for Inuit and other Nunavut residents.

The ongoing review will be conducted to meet the requirements of the NNI Policy and will constitute the ongoing requirement mandated by the Revised NNI Policy.

Under Clauses 17 and 19 of the NNI Policy, a Contracting Policy Review Committee (Review Committee) consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated shall be established to review the implementation of the Policy. This Review Committee is to meet at least on a quarterly basis to ensure that progress towards the objectives of the Policy is being made and to do the Annual Review.

Under Clause 21 of the NNI Policy, Cabinet may make changes to this policy consistent with the obligations of the Government of Nunavut in Article 24 of the Nunavut Land Claims Agreement that requires a collaborative process with Nunavut Tunngavik Inc. in the maintenance of preferential procurement policies, procedures and approaches.

Scope of the Review

The Review Committee will conduct an ongoing review of the NNI Policy and conduct the next Comprehensive Review in 2008. The responsibilities will include but not be limited to performing:

- A review of GN contracting data, subject to or exempted from the NNI Policy annually;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in Article 24 of the NLCA and of the objectives of the NLCA in general;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in Sections 11 and 12 of the policy;
- A review of the recommendations of the previous review and their implementation; • A review of the monitoring and enforcement concerns that may have arisen or may arise out of the implementation of the NNI Policy;
- A review of the results of all submissions and input received through written submissions from third parties.
- A full comprehensive review in 2008 based on mutually accepted Terms of Reference specifically developed for this review.

The Review Committee will prepare a report annually that shall include recommendations which, in the opinion of the Committee, will ensure that the Government of Nunavut is better able to take meaningful steps toward providing Inuit with the means of participating in economic opportunities in Nunavut by maximizing Inuit employment and business opportunities as well as incorporating proposed changes that will benefit Inuit and all Nunavummiut. The report shall specifically address how the Government of Nunavut can best carry out the terms of Article 24 of the NLCA through the appropriate application of preferential contracting policies, procedures and approaches. Without limiting the scope of possible recommendations, the Review Committee may recommend the following:

- Revisions to the NNI Policy
- Amendments to legislation or regulations.
- Changes in administrative or regulatory structures.
- Other arrangements.

Composition of the Review Committee

- NTI and the GN shall each appoint up to a maximum of six members to the Review Committee; a minimum of two members from each organization shall constitute a quorum.
- Deputy Minister of Economic Development and Transportation, Government of Nunavut and the Chief Executive Officer, Nunavut Tunngavik Incorporated shall appoint a Senior Representative.
- The Review Committee shall be chaired by the Senior Representatives jointly.
- The Senior Representatives, upon mutual agreement, may invite people with particular knowledge or expertise to attend meetings of the Review Committee for the purposes of providing specific support and advice. NTI and GN will notify the Senior Representatives, at least three days in advance, of any meeting where such resource people will attend. Each team will be limited to three invited resource people per meeting.
- Decisions of the Review Committee will be by agreement of the Senior Representatives, all communications regarding these decisions, will be made by the Senior Representatives jointly.
- The Annual Report must be agreed to by the senior representative for each Party and will be submitted by the Chair of the Review Committee to the Deputy Minister of Intergovernmental Affairs and the Chief Executive Officer of Nunavut Tunngavik Inc.

Consultation

- The Review Committee shall invite public input and consult with interested parties as required. • The Review Committee shall agree to a process for regional consultations according to a schedule mutually acceptable to both parties where needed.

Reporting Relationships

- The Senior Representative of the Government of Nunavut, for the purposes of the Review Committee, shall report to the Deputy Minister of Economic Development and Transportation.

- The Senior Representative of NTI and other Inuit Organizations, for the purposes of the Review Committee, shall report to the Chief Executive Officer of NTI.

Time Frame

- The committee shall meet quarterly and complete its Annual Report no later than November 1 of each year.
- All relevant information or data gathered in advance by either GN or NTI shall be provided to all Committee members in a timely manner before meetings.
- The Committee shall consider its deliberations and recommendations and prepare an Annual Report to be submitted to Cabinet and to the NTI Executive Committee for approval, and both Parties will make best efforts to make the report available to the public no later than November 30 of each year, following the approvals.

Costs

- GN will be responsible for the costs of the participation of its staff;
- NTI will be responsible for the costs of the participation of its staff;
- The costs of public consultations, including advertising will be the responsibility of the GN;
- GN will bear the costs of providing secretarial support to the Review Committee;
- The costs of advertising, production, translation and distribution of the draft report will be the responsibility of the GN.

Confidentiality

The parties commit to disclose information to the Review Committee as fully as possible. It is recognized that some information provided by firms may be commercially sensitive, personal or provided by third parties in the expectation that it would not be shared with anyone outside the Government of Nunavut. Such information will be kept strictly confidential and shall not be disclosed or used by any person in any proceedings or in any manner outside the review process.

Signed on this 16th day of July, 2004 at Iqaluit, Nunavut

Signed	*Signed*
Alex Campbell	John Lamb
Deputy Minister	Chief Executive Officer
Economic Development and Transportation	Nunavut Tunngavik Incorporated
Government of Nunavut	